

# **EXHIBIT**

## **B**

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1           IN THE UNITED STATES DISTRICT COURT  
2           NORTHERN DISTRICT OF ALABAMA  
3           EASTERN DIVISION  
4

5       CIVIL ACTION NUMBER:  
6       CV-06-BE-1486-E  
7

8       PATRICIA ANNE COTTON,  
9           Plaintiff(s),  
10       vs.  
11       ALT, INC., WESTOWER COMMUNICATIONS,  
12       INC., CINGULAR WIRELESS, LLC, et al.,  
13           Defendants(s).  
14

15  
16                   DEPOSITION TESTIMONY OF:  
17                   GIRARD H. TURNER  
18

19       AUGUST 23, 2007  
20       9:13 A.M.  
21

22       COURT REPORTER:  
23       Timothy R. Lovelady, CSR, CLR, CMRS

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1 going?

2 THE WITNESS: Let's get it over  
3 with. I've got seven hours of driving  
4 ahead of me.

5 MR. JOHNSON: Well, just so you  
6 know, this is Cingular's lawyer and not  
7 Cingular and BetaCom's.

8 EXAMINATION BY MR. NORRIS:

9 Q. I was going to introduce myself.  
10 Mr. Turner, I'm Patrick Norris. I  
11 introduced myself this morning. And I do  
12 represent Cingular. And I'm going to try  
13 to not ask, believe me, some of the  
14 questions that have already been asked.  
15 For that reason, I'm going to kind of skip  
16 around. So if you have any trouble  
17 following me, let me know, okay?

18 A. Thank you, sir.

19 Q. All right. Now, you told us  
20 already that you weren't real familiar with  
21 the tower industry. I'm going to ask you:  
22 Do you have any familiarity with the  
23 wireless industry?

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1           A.    No, sir.

2           Q.    Do you have any familiarity with  
3           the customs and practices employed by those  
4           companies that work in the wireless  
5           industry?

6           A.    No, sir.

7           Q.    Do you have any experience or  
8           knowledge of about how the companies that  
9           work in the wireless industry typically  
10          interact with one another?

11          A.    No, sir.

12          Q.    Do you have -- give me your  
13          general understanding of the companies that  
14          were involved on this particular site.  
15          First of all, give me the names of the  
16          companies that you can recall that actually  
17          were involved in this site.

18          A.    Cingular was ultimately in  
19          control of that job site is my  
20          understanding. WestTower also was the  
21          contractor with the ALT people on that job  
22          site. ALT was actually changing out the  
23          antennas, and that BetaCom was changing out

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1 the electronic equipment inside the  
2 building. That there were other  
3 contractors on that job site at different  
4 times in order to change buildings out by  
5 using a crane to offload the existing  
6 building and put it on site and put it back  
7 on -- put a new building back in there.  
8 But they are not involved in this issue is  
9 my understanding.

10 Q. All right. What is your  
11 understanding, if any, was the  
12 relationship, if any, between Cingular and  
13 WestTower?

14 A. I'm not sure that I understand  
15 it.

16 Q. How about between WestTower and  
17 ALT?

18 A. I don't remember exactly who  
19 contracted who on that job site.

20 Q. Have you ever heard of NSORO?

21 A. Only what I saw in the -- it's  
22 my understanding it's a paper entity, so to  
23 speak, that they were never on that job

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1 site. It's only someone that's a minority  
2 contractor that it goes through their hands  
3 from my understanding of it. But I've  
4 never heard of them.

5 Q. Do you have any knowledge of any  
6 relationship, if any, between Cingular and  
7 NSORO?

8 A. No, sir.

9 Q. How about between NSORO and any  
10 other person you've named already?

11 A. I don't know other than the fact  
12 that it's my understanding it was a  
13 minority contractor, that it was in the  
14 loop in order to qualify for some kind of  
15 grant or Federal monies or whatever, I  
16 don't know. It's not a safety issue with  
17 me.

18 Q. Do you have any information at  
19 all as to whether or not NSORO was directly  
20 involved with any of the work on this  
21 particular site?

22 A. It's my understanding they were  
23 not.

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1 Q. What do you base that  
2 understanding on?

3 A. Because I see no evidence of it.

4 Q. Do you happen to know who hired  
5 WestTower on this particular job?

6 A. I don't recall the contracts on  
7 that, no, I do not.

8 Q. Do you know who hired ALT?

9 A. I don't remember. I'd have to  
10 go back to the contracts to figure it out.

11 Q. That information, I guess, was  
12 not important to you in reaching any of  
13 your opinions in this case?

14 A. That is correct.

15 Q. What involvement, if any, is it  
16 your understanding Cingular had on this  
17 site?

18 A. My understanding, they were the  
19 ultimate in control of this work site, that  
20 they had had representatives on that job  
21 site at various times. So they knew this  
22 job was in process and they had input into  
23 some schedules of work with BetaCom. But

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1 beyond that, I don't know.

2 Q. And you say it's your  
3 understanding that they were ultimately in  
4 control. What do you base that on?

5 A. They were the ones forking out  
6 the money.

7 Q. Are you basing it on anything  
8 else besides that?

9 A. No, sir.

10 Q. Forking out the money. Is that  
11 an OSHA term?

12 A. Yes, sir.

13 MR. JOHNSON: Note both the  
14 lawyer and the witness were laughing.

15 MR. NORRIS: That was certainly  
16 a joke. The court reporter can't take down  
17 smiles, can he?

18 MR. JOHNSON: That's right.  
19 That's why I said it.

20 Q. (By Mr. Norris:) Mr. Turner,  
21 let me ask you, since you testified you're  
22 not familiar with the wireless industry,  
23 you understand, I guess, that Cingular is a

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1 wireless carrier? You know that, don't  
2 you?

3 A. Sure.

4 Q. Do you know whether or not it's  
5 the custom and practice of a wireless  
6 carrier when having an equipment upgrade  
7 done, like on this site, that they retain  
8 contracts to do that work and that they  
9 rely on those contractors to have their own  
10 safety procedures and protocols in place?

11 MR. JOHNSON: Let me just real  
12 quick state an objection on the record just  
13 for this and I don't want to give you a  
14 speaking objection. But part of this has  
15 to do with the fact that we still have yet  
16 to see any contracts between Cingular and  
17 anybody other than some kind of master  
18 agreement with NSORO that's unsigned,  
19 redacted, marked up. And I think it's  
20 unfair to ask this witness questions about  
21 contracts that haven't even been produced  
22 to us in discovery, although they've been  
23 asked for.

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1 MR. NORRIS: Well, now --

2 MR. JOHNSON: Go ahead. For the  
3 record, try to answer his question.

4 MR. NORRIS: Well, let me  
5 respond to that. You've got the master  
6 agreement between Cingular and NSORO, which  
7 he says he's looked at and even cited one  
8 provision earlier on in the deposition.

9 MR. JOHNSON: That's true.

10 MR. NORRIS: And for the record,  
11 there are -- you're correct, Eddie, there  
12 are -- I don't know what better words to  
13 use, boxes on some of those pages that you  
14 can't read behind and for the record the  
15 copy you have is the only one that I have  
16 and we have requested another one from  
17 NSORO. And if I'm reading my e-mails  
18 correctly, I think I've gotten five or six  
19 different PDFs that are all supposed to be  
20 all together, a complete copy of that. So  
21 hopefully, that is one that is actually  
22 without the boxes on there. But you also  
23 have a contract with WestTower, you're got

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1 both of those and you've got that one as  
2 well. That's been produced.

3 MR. JOHNSON: I don't believe  
4 we've got one that's been authenticated as  
5 a signed contact. Okay. We've got  
6 something, we just don't know what it is.

7 MR. NORRIS: You've gotten the  
8 one between Cingular and WestTower.

9 MR. JOHNSON: If you'll  
10 represent that, we'll accept that.

11 Q. (By Mr. Norris:) In any event,  
12 in general terms, in general terms we're  
13 talking about, do you know, Mr. Turner,  
14 whether or not in the wireless industry, so  
15 to speak, that it is industry custom and  
16 practice of a wireless carrier having  
17 equipment upgrades done to rely on the  
18 contractors that are hired to do that work  
19 to have their own safety protocols and  
20 procedures in place?

21 MR. JOHNSON: Object to the  
22 form.

23 MR. DEAN: Object to the form.

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1           A.    They may, in fact, rely upon it  
2    and do it as you stated. But the law and  
3    OSHA rules and regulations under 29 CFR,  
4    Federal Rules and Regulations, 1926.16  
5    entitled Rules for Construction ", in  
6    essence you can contract away for the  
7    actual work to be performed but in no case  
8    shall the prime contractor", that's  
9    Cingular in this case, "be relieved of the  
10   overall responsibility for compliance with  
11   the requirements of this part for all work  
12   to be performed under the contract. So  
13   therefore, you cannot contract away your  
14   duty and responsibility."

15               That's the reason OSHA will hold  
16   the prime contractor, in this case  
17   Cingular, as the controlling employer and  
18   therefore they could and should have issued  
19   the same citations to Cingular as they did  
20   to the other employers on this job site.

21           Q.    Are you talking about the multi  
22   employer liability doctrine?

23           A.    Absolutely.

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1 Q. Okay. We'll get to that in a  
2 minute. But in terms of industry custom  
3 and practice, do you know whether or not,  
4 in fact, that is how it works in the  
5 wireless industry, that is the custom and  
6 practice?

7 A. I don't care what the practice  
8 is. I'm saying the law is going to stand  
9 on its own two feet and say you cannot  
10 contract away your duties and  
11 responsibilities. You're stuck with it  
12 forever.

13 Q. All right. And again, we'll get  
14 to that, believe me. I'm just trying to  
15 get an answer to my question. Do you know  
16 if that's how it works in the industry or  
17 not?

18 A. I have no idea.

19 Q. Okay. If there is testimony  
20 that that is, in fact, how it works, you  
21 wouldn't be able to dispute it, would you?

22 A. I wouldn't dispute it, but I  
23 don't agree with it either. The law is the

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1 law and it's going to stand on its own two  
2 feet.

3 MR. JOHNSON: Just try to answer  
4 his questions. I mean you know you've got  
5 to...

6 Q. (By Mr. Norris:) Tell me what  
7 you understand. You said that Cingular had  
8 representatives on site at various times.  
9 Now, what do you understand about that?

10 A. Mr. Wheeler's deposition, I  
11 remember reading something about the  
12 Cingular people that don't come on that job  
13 site. He even talked about a -- what did  
14 he say, a mad hat? I've forgotten the term  
15 he used. Yelling. Loud.

16 MR. JOHNSON: Is that what he  
17 called it, a mad hat?

18 MR. DEAN: Mad hat.

19 Q. (By Mr. Norris:) Anything  
20 besides what you saw in Mr. Wheeler's  
21 deposition, is there any knowledge you may  
22 have about Cingular having any  
23 representatives out there?

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1 A. Not that I recall.

2 Q. And you mentioned that Cingular,  
3 you thought, had input on schedules of  
4 BetaCom's work. What do you base that on?

5 A. From Mr. Wheeler's deposition.  
6 He's shortening his time frame with  
7 deadlines.

8 Q. Anything you understand about  
9 Cingular's involvement, if any, does that  
10 come from Wheeler's deposition?

11 A. Really, yes.

12 Q. Do you have any information at  
13 all that Cingular reserved the right of  
14 control over any of the employers out there  
15 in terms of how they did their job?

16 A. I don't think they were  
17 directing the work, if that's what you're  
18 asking.

19 Q. Do you have any information that  
20 Cingular somehow reserved right of control  
21 over the site itself, the location, or any  
22 speculation or conjecture?

23 A. I'm not sure I'm -- how about

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1 repeating that question. I didn't -- it's  
2 getting late in the day for me.

3 Q. That's all right. I asked you  
4 if you need a break, if you do you let me  
5 know, okay?

6 A. Okay. Thank you.

7 Q. Do you have any information,  
8 outside of any speculation, conjecture or  
9 assumption, that Cingular in any manner  
10 reserved a right of control over the site  
11 itself?

12 A. Other than the deposition of  
13 where it had come out, and the changing  
14 schedule. So apparently they had some  
15 control of that site. To me, I mean that's  
16 not really speculation. I'm relying now on  
17 the deposition of Mr. Wheeler.

18 Q. All right. You're talking about  
19 just a change in the timetable. He  
20 testified that they were supposed to be  
21 done with their work on day X and they got  
22 moved up two or three days to whatever day  
23 it was. Is that what you're talking about?

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1           A.    That's control of that job site  
2    as far as that's the way I understand it.

3           Q.    All right.  What about in terms  
4    of access to the job site, coming and  
5    going, in and out, do you know if they  
6    observed right of control over that?

7           A.    I have no idea.

8           Q.    Do you know if the employees or  
9    employers that were out there had to obtain  
10   permission or authority from somebody else  
11   to be on the site at any given time?

12          A.    I have no idea.

13          Q.    You don't know if Cingular  
14   controlled those things, do you?

15          A.    No.

16          Q.    Have you ever heard of Crown  
17   Castle?

18          A.    I've heard the term.  They owned  
19   the property, I think.

20          Q.    Do you know anything more about  
21   that?

22          A.    No, sir.

23          Q.    Let me ask you about the multi

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1 employer liability doctrine. You testified  
2 that in your judgment Cingular could have  
3 been determined by OSHA to be a controlling  
4 employer; is that correct?

5 A. That is correct.

6 Q. And you also testified in your  
7 judgment that WestTower and ALT could also  
8 be found to be controlling employers; is  
9 that correct?

10 A. That is correct.

11 Q. Is it your testimony you can  
12 have more than one controlling employer on  
13 a single site?

14 A. Absolutely. You can have more  
15 than one correcting and you can have more  
16 than one exposing.

17 Q. What is a controlling employer?

18 MR. JOHNSON: Object to the  
19 form.

20 A. The one who is in ultimate  
21 control, that would be number one, and  
22 anybody who has subcontractors beneath him.  
23 So if we've got three different layers, we

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1     could have multiple controlling employees  
2     for that phase of that work.

3           Q.     When you say ultimate control,  
4     what do you mean by that?

5           A.     The one who has absolute control  
6     from the top to the bottom. He is the top  
7     man, in essence.

8           Q.     Well, what is absolute control,  
9     what does that mean to OSHA?

10          A.     The money starts here.

11          MR. JOHNSON: Are we back to our  
12     joke?

13          Q.     (By Mr. Norris:) No, I'm not  
14     following you. What are the criteria that  
15     you would look at? If you were the one out  
16     there that was doing the review, you were  
17     still working at OSHA now, what would be  
18     the criteria you would look at to determine  
19     whether or not someone was the controlling  
20     employer?

21          A.     Whose contract with who. And  
22     follow the chain of money.

23          Q.     Are you telling me that the

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1 criteria are as simple as company A that  
2 hires company B, company A is the  
3 controlling employer?

4 A. Absolutely.

5 Q. Does it have anything to do with  
6 controlling the manner in which the work is  
7 done?

8 A. Not necessarily, no.

9 Q. Company A that hired company B,  
10 they wouldn't necessarily need supervisory  
11 authority according to your testimony; is  
12 that right?

13 MR. DEAN: Object to the form.

14 A. That is correct.

15 Q. They don't need any kind of  
16 right of control; is that correct?

17 A. As far as I know.

18 Q. Can they be a controlling  
19 employer if the contract they have does not  
20 indicate such?

21 MR. DEAN: Object to the form.

22 A. Sure.

23 Q. Can they be a controlling

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1 employer if the industry custom between the  
2 two companies is that the hiring company  
3 does not interfere with or control the work  
4 of the company they hire?

5 MR. DEAN: Object to the form.

6 MR. JOHNSON: Object to the  
7 form.

8 A. That's just playing word games.  
9 They're ultimately in control and you  
10 cannot contract away your duties and  
11 responsibilities according to law.

12 Q. Can you envision any scenario  
13 where a company that hires another company  
14 to do work would not be a controlling  
15 employer?

16 A. I can think of several  
17 situations in which it would be -- I'll  
18 give you a good example. Maybe it'll  
19 clarify it. You're at this law firm and  
20 the next law firm, these lawyers are legal  
21 beavers, so to speak. If the air  
22 conditioner goes out, they're going to go  
23 out and get them not a druggie or drunkie

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1 off the street, they're going to a  
2 legitimate resource to come in and work on  
3 the heating and air conditioning system.  
4 So therefore, are they in a position to  
5 have any control over those people, not  
6 really. That is a specialty area beyond  
7 their normal scope of work, whereas  
8 Cingular, in this case, would be within  
9 their normal scope of work.

10 Q. And you find support for that  
11 where in the OSHA regs?

12 A. It's just what I was taught in  
13 the legal aspects of training at the OSHA  
14 Institute.

15 Q. Okay. I appreciate that. But  
16 I'd love it if you could find a reference  
17 to that in the OSHA regs that you've  
18 printed out and have in front of you.

19 MR. JOHNSON: Object to the  
20 form.

21 A. I just explained that's what I  
22 was taught at the OSHA Institute. But I  
23 don't have any written documentation of

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1     that.

2           Q.     Okay. Any other scenarios you  
3     can come up -- let me ask it this way then:  
4     If company A hires company B, if they're  
5     always situated whereas they are in a  
6     similar type of work or have similar  
7     interest, can you envision a scenario where  
8     company A would not be a controlling  
9     employer?

10           MR. JOHNSON: Object to the  
11     form.

12           Q.     (By Mr. Norris:) As opposed to  
13     your example of a law firm hiring somebody  
14     to fix it's air conditioner?

15           A.     Not really.

16           Q.     What is the current state, if  
17     you know, of OSHA's multi employer  
18     liability document?

19           A.     I missed the first part of that.

20           Q.     What's the current state of  
21     that, is OSHA still issuing citations based  
22     on that document?

23           MR. JOHNSON: Object to the

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1 form.

2 A. I'm not sure. I know there has  
3 been a judge made a ruling here recently  
4 and I'm not sure what OSHA is doing about  
5 it, momentarily other than on hold, I  
6 expect it will go to a review commission or  
7 review panel. I think OSHA is going to  
8 challenge that decision.

9 Q. What was the decision, your  
10 understanding of it?

11 A. I'm not sure of all the details  
12 of it and I am not going to make any  
13 comments on it other than the fact that I  
14 know it has been challenged, or one man  
15 made a ruling, so to speak, about OSHA's  
16 multi employer citation policy and it was  
17 not favorable to OSHA. And to that extent,  
18 that's all I know.

19 Q. Do you know what part of the  
20 multi employer liability doctrine was  
21 addressed in that decision?

22 A. No, sir.

23 Q. Do you know what the issue in

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1     that case was?

2     A.    No, sir.

3     Q.    Do you know whether or not any  
4     of the particular employers or people  
5     involved in this case could be held liable  
6     as a controlling employer in light of that  
7     new decision?

8     A.    Because this happened before  
9     that decision, therefore I think what was  
10    in precedence on the day of this mishap  
11    should prevail.

12    Q.    All right. Thank you for that.  
13    But my question is: Do you know whether or  
14    not any of the companies involved in this  
15    case could be held liable as a controlling  
16    employer under the multi liability doctrine  
17    if it's upheld after that last decision we  
18    just talked about?

19           MR. DEAN: Object to the form.

20           MR. JOHNSON: Same.

21    A.    I'm not in a position to answer  
22    that question. I don't know.

23           THE WITNESS: Can I say

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1 something off the record?

2 MR. JOHNSON: It's his record  
3 right now. So before you can say anything,  
4 let him let you say something off the  
5 record.

6 MR. NORRIS: I didn't hear him.  
7 Did you say --

8 MR. JOHNSON: He wanted to say  
9 something off the record. I don't know  
10 what it is.

11 Q. (By Mr. Norris:) Let me just  
12 say -- let me ask my next question and if  
13 you want to talk to your lawyer -- not your  
14 lawyer, the lawyers that have hired you on  
15 a break, then that's fine.

16 MR. JOHNSON: I'm not his  
17 lawyer. Let's get that straight.

18 MR. NORRIS: I tried to fix  
19 that.

20 MR. JOHNSON: Okay.

21 MR. NORRIS: Do you need to go  
22 to the bathroom or something?

23 THE WITNESS: No.

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1 MR. NORRIS: If that's the case,  
2 let us know.

3 MR. JOHNSON: I mean that's what  
4 I wanted to know.

5 MR. DEAN: It's a privilege  
6 motion.

7 Q. (By Mr. Norris:) What is your  
8 criticism, if any, of Cingular in this  
9 case?

10 A. That they were the ultimate in  
11 controlling that job site and did not act  
12 in a manner in which would be expected of  
13 them under the OSHA multi employer work  
14 site policy.

15 Q. All right. How did they not do  
16 that?

17 A. By not controlling the job site  
18 to keep the two subject entities here,  
19 BetaCom and ALT, off of that site, working  
20 aloft on the same day.

21 Q. Is that the same criticism you  
22 have of WestTower?

23 A. Correct.

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1 Q. Okay. Any other criticisms  
2 besides that of Cingular?

3 A. Not really.

4 Q. And tell me what you think  
5 Cingular should or could have done that you  
6 think would have been reasonable or  
7 prudent?

8 A. To evaluate the situation and  
9 know that the -- who was going to be on  
10 that job site which day doing what work and  
11 knowing the circumstances of removing the  
12 hazards of overhead work while the BetaCom  
13 people were on that job site.

14 Q. Do you have any evidence, Mr.  
15 Turner, that Cingular knew that ALT and  
16 BetaCom were going to be working on that  
17 site at the same time and that they would  
18 not communicate with one another as you've  
19 described earlier when you said it was okay  
20 if they worked on the same site as long as  
21 they had a procedure in place. Do you have  
22 any idea that Cingular knew that was going  
23 to happen?

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1 MR. DEAN: Object to the form.

2 MR. JOHNSON: Object to the  
3 form.

4 A. I think they had a duty to know  
5 it was going to happen.

6 Q. How would they have fulfilled  
7 that duty?

8 A. By controlling that job site.

9 Q. Well, how specifically would  
10 they have controlled the job site on that  
11 particular day?

12 A. You know who's going to be on  
13 that job site, what the nature of that work  
14 is going to be and whether or not you're  
15 going to allow them on that job site that  
16 day while that type of work is being done.  
17 Somebody has got to take control.

18 Q. Uh-huh. I'm struggling trying  
19 to get the same thing somebody else said.  
20 With that answer, I've got to ask it. Just  
21 so I'm clear, I don't want there to be a  
22 misunderstanding on this.

23 If BetaCom and ALT are working

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1 out there on the site at the same time with  
2 the BetaCom people in the building and the  
3 ALT people outside on the tower, as long as  
4 they were communicating and had a procedure  
5 in place you don't have a problem with  
6 that?

7 MR. DEAN: Object to the form.

8 A. And following it?

9 Q. Yeah, sure, and following it.  
10 You don't have a problem with that; is that  
11 correct?

12 MR. DEAN: Object to the form.

13 A. That is correct.

14 Q. Okay. Let me ask you this while  
15 I'm thinking about it. I want you to  
16 assume for me the BetaCom people knew that  
17 ALT was out on the tower because they were  
18 working in the building, okay, assume that  
19 for me.

20 A. Correct.

21 Q. And assume that a procedure was  
22 in place that they would communicate with  
23 one another and they were following that

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1 procedure. Whose responsibility would it  
2 have been to have let the other one know  
3 when the BetaCom crew decided they were  
4 going to come out of the building, would it  
5 have been BetaCom's crew to let ALT know  
6 they were coming out?

7 MR. DEAN: Object to the form.

8 MR. JOHNSON: Same objection.

9 A. I'll agree with that statement  
10 because it's kind of like did the car stop  
11 for the train or did the train stop for the  
12 car.

13 Q. Now, my question was: Do you  
14 have any information that Cingular knew  
15 that ALT and BetaCom would work on the same  
16 site at the same time but not allegedly  
17 have this plan in place and follow this  
18 plan to work safely together? Do you have  
19 any information that Cingular knew that  
20 would happened?

21 MR. JOHNSON: Object to the  
22 form.

23 A. No, sir. However, I will say

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1 that they had a duty to know.

2 Q. Let me ask you about the Alabama  
3 statute you provided, 2511. I don't recall  
4 which exhibit that was. I think it was --  
5 what?

6 MR. JOHNSON: 22, Patrick, I  
7 think.

8 Q. (By Mr. Norris:) Have you got  
9 that in front of you?

10 A. Yes, sir.

11 Q. Do you know whether or not an  
12 employer can be held liable for the safety  
13 of someone else's employee where that  
14 employer did not reserve the right of  
15 control over the workplace?

16 A. I don't see where it says in  
17 this statute that he's got to reserve a  
18 right to control. He has got the duty, and  
19 he can't contract away that duty. So  
20 therefore I don't understand what you're  
21 trying to get to.

22 Q. Do you know anything about the  
23 application of this statute, other than the

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1 actual statute as you read it right here in  
2 front of you?

3 A. That is correct.

4 Q. Would you agree with me in this  
5 particular case that Cingular did not  
6 create the hazard, with the hazard being  
7 working aloft, people down below?

8 MR. DEAN: Object to the form.

9 A. I'll agree with that statement.  
10 I never said Cingular was the creating  
11 employer.

12 Q. This is the first time I've  
13 asked you about this, I'm not coming back  
14 to something. And would you agree that  
15 Cingular's own employees were not exposed  
16 to the hazard?

17 A. If they were out there on that  
18 job when they were on that tower, they were  
19 exposed to it.

20 Q. Say that one more time.

21 A. If Cingular's employees were on  
22 that job site while people were aloft, ALT  
23 people was on that tower, they would have

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1     been exposed to it and subject to an  
2     exposing employer.

3           Q.     All right. Now, do you know if  
4     on the day of the accident Cingular had any  
5     employees out there?

6           A.     I have no idea.

7           Q.     If they didn't, then they would  
8     not have had any of their employees exposed  
9     to the hazard. That's common sense, isn't  
10    it?

11          A.     That wouldn't be an exposing  
12    employer, but they're still the controlling  
13    employer.

14          Q.     Okay. I'm just talking about  
15    exposing now.

16          A.     Okay.

17          Q.     What is, just in your own words,  
18    under the OSHA multi employer liability  
19    doctrine, what is the definition of a  
20    controlling employer?

21          A.     It goes back to the golden rule,  
22    who has the gold makes the rules. So  
23    therefore they're in control.

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1 Q. Is that your understanding of  
2 what it says?

3 A. Yes, sir.

4 Q. I think you said this already,  
5 but Cingular was not cited by OSHA for any  
6 violations in this matter; is that correct?

7 A. I have not found any evidence of  
8 it.

9 Q. To your knowledge, they were  
10 not? To your knowledge, Cingular was not  
11 cited?

12 A. That's correct, because I have  
13 seen no evidence of it.

14 Q. Have you ever been asked to look  
15 at a case involving a wireless industry?

16 A. No, sir.

17 Q. Getting back to your opinion  
18 that Cingular is a controlling employer and  
19 the duties they would have, would you agree  
20 that one of the ways they could satisfy  
21 their duty would be to make sure -- to make  
22 it clear, as in the contract that you read  
23 before, the NSORO contract, that the folks

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1 that are out there on the job are following  
2 their own safety procedure protocols?

3 A. I think they had that duty.

4 Q. Sir?

5 A. I think they had that duty.

6 Q. Okay. If they did do that,  
7 would that be one of the ways they could  
8 satisfy their duty?

9 A. Absolutely.

10 Q. Obviously, you'd agree with me  
11 that neither Cingular nor WestTower or  
12 anybody involved, they can't have a person  
13 there every single day, can they, on the  
14 job site? That's not practical, is it?

15 MR. JOHNSON: Object to the  
16 form.

17 A. I think they could. I don't  
18 think it's required.

19 Q. But it's not practical, is it?

20 MR. JOHNSON: Object to the  
21 form.

22 A. Depending on the circumstance.

23 Q. Well, real world, that's what

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1 we're talking about here.

2 MR. DEAN: Object to the form.

3 A. Well, we're talking about  
4 people's lives, too.

5 Q. Are you familiar with -- well, I  
6 can't ask you about wireless since -- are  
7 you familiar with a construction -- no, I'm  
8 not going to ask you that.

9 With a controlling employer,  
10 their duties on the job site, are their  
11 duties the same no matter whether or not  
12 you're talking about its own employees  
13 versus another employer's employees, or is  
14 that controlling employer's duty greater  
15 than or less than?

16 MR. DEAN: Object to the form.

17 MR. JOHNSON: Object to the  
18 form.

19 A. I think all that responsibility  
20 makes it greater.

21 Q. I think I'm going to agree with  
22 this plaintiff lawyer. That was a terrible  
23 question. I'm going to ask it again.

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1           When you're talking about a  
2   controlling employer and what duties it has  
3   on a job site, do its duties change if  
4   you're looking at them as what they owe to  
5   its own employees versus what they owe to  
6   another contractor's employees?

7           A.   They owe the same duty to  
8   everyone on that job site.

9           Q.   You've been today talking about  
10   reasonable and prudent, and what is  
11   reasonable and prudent for Randy Wheeler,  
12   who was the lead person on the BetaCom  
13   crew.

14          A.   To assure --

15          Q.   What? I didn't even ask the  
16   question yet.

17          MR. JOHNSON: I objected and  
18   he's just talking.

19          MR. NORRIS: I was just setting  
20   up the question.

21          Q.   (By Mr. Norris:) On the day of  
22   this accident, that morning, he sees the  
23   tower crew come inside, the equipment